

## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS (SHERMAN DIVISION)

UNITED STATES OF AMERICA,

Plaintiff,

v.

GUSTAVO ANGARITA RIOS, JOSE  
HOME ACOSTA, et al.,Defendants.Case No. 4:14-cr-00073-SDJ-  
KPJ-1 and 3Plano, Texas  
December 1, 2016  
11:04 a.m.TRANSCRIPT OF CHANGE OF PLEA HEARING  
BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Plaintiff:

Ernest Gonzalez, Esquire  
U.S. Attorney's Office  
101 E. Park Boulevard  
Suite 500  
Plano, TX 75074

For the Defendants:

(Gustavo Angarita Rios  
and Jose Home Acosta)Scott T. Kalisch, Esquire  
Law Offices of Scott Kalisch  
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Court Recorder:

Toya McEwen

Interpreter:

Luis Garcia

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(518) 302-6772Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   (Call to order at 11:04 a.m.)

2                   THE COURT: All right, the Court calls cases number  
3 414CR73, United States v. Gustavo Angarita Rios and Jose Home  
4 Acosta.

5                   MR. GONZALEZ: Your Honor, Ernest Gonzalez for the  
6 Government. The Government's ready to proceed.

7                   MR. KALISCH: Your Honor, Scott Kalisch appearing on  
8 behalf of both Defendants. They're present in Court. We're  
9 ready to proceed. Thank you.

10                  THE COURT: Good morning.

11                  And Mr. Kalisch, you represent both Defendants,  
12 correct?

13                  MR. KALISCH: Correct, Your Honor. Yes, Your Honor.

14                  THE COURT: Okay.

15                  THE INTERPRETER: Thank you, Your Honor.

16                  THE COURT: Uh-huh. Let the record reflect we have  
17 Mr. Luis Garcia here to provide interpreting services for both  
18 Mr. Rios and Mr. Acosta.

19                  Mr. Rios and Mr. Acosta, because you are indicted in  
20 the same case and represented by the same counsel and  
21 essentially have the same plea agreements, I'm going to take  
22 your pleas together.

23                  However, I will need separate answers to each  
24 question that I ask. So do we have an order? Is Mr.  
25 Rios -- are you Mr. Rios?

1                   MR. RIOS (through interpreter): Yes.

2                   THE COURT: Yes.

3                   Okay, and you are Mr. Acosta?

4                   MR. ACOSTA (through interpreter): Yes, ma'am.

5                   THE COURT: All right, when -- I'm going to speak to  
6 you -- to both of you together, but then when I ask a question,  
7 Mr. Rios, if you will answer first.

8                   And then, Mr. Acosta, you second.

9                   Every time I ask a question unless I specifically  
10 direct a question to you, that will hurt -- help for  
11 clarification of the record. Do you understand?

12                  MR. RIOS: Yes.

13                  MR. ACOSTA: Yes, ma'am.

14                  THE COURT: Okay. All right, please raise your right  
15 hand to be sworn.

16                  (Defendants are sworn)

17                  THE COURT: Please state your full name and age for  
18 the record?

19                  MR. RIOS: Gustavo Angarita Rios, 60 years old.

20                  MR. ACOSTA: Jose Home Acosta, 53 years old.

21                  THE COURT: And what is the last grade of school that  
22 you completed?

23                  MR. RIOS: I went to school one year only.

24                  MR. ACOSTA: And I went to school three years.

25                  THE COURT: Can you read and write?

1                   MR. RIOS: A little, tiny bit.

2                   MR. ACOSTA: Yes, I do, yes.

3                   THE COURT: Have you ever been diagnosed with any  
4 mental illness or problem?

5                   MR. RIOS: No.

6                   MR. ACOSTA: No.

7                   THE COURT: Are you currently under the influence of  
8 any drug or alcohol?

9                   MR. RIOS: No.

10                  MR. ACOSTA: No.

11                  THE COURT: Counsel, do you believe that Mr. Rios and  
12 Mr. Acosta are fully competent to proceed here today?

13                  MR. KALISCH: Yes, I do, Your Honor.

14                  THE COURT: All right, sirs, you have the right to  
15 have your plea of guilty taken by the district judge assigned  
16 to your case.

17                  Or you can have the United States magistrate judge  
18 take your plea and make a recommendation to the district judge.  
19 Have you discussed this right with your counsel?

20                  MR. RIOS: Yes.

21                  MR. ACOSTA: Yes.

22                  THE COURT: I am not sure whose is whose to hold up  
23 for whom. Oh, okay. So Rios is 1? Okay, all right.

24                  All right, Mr. Rios, I'm holding up a waiver and  
25 consent form. Is that your signature on the bottom?

1 MR. RIOS: Yes.

2 THE COURT: And did you review this document with  
3 your counsel before you signed it?

4 MR. RIOS: Yes.

5 THE COURT: And is it your desire to proceed with  
6 your plea of guilty before a magistrate judge here today?

7 MR. RIOS: Yes, Your Honor.

8 THE COURT: All right, I find the waiver and  
9 consent's been knowingly and voluntarily given and we'll  
10 proceed with your plea today.

11 Mr. Acosta, I'm holding up a waiver and consent form.  
12 Is that your signature on the bottom?

13 MR. ACOSTA: Yes, Your Honor.

14 THE COURT: And did you review this form with your  
15 counsel before you signed it?

16 MR. ACOSTA: Yes, Your Honor.

17 THE COURT: And is it your desire to proceed with  
18 your plea of guilty before me, a United States magistrate judge  
19 here today?

20 MR. ACOSTA: Yes, Your Honor.

21 THE COURT: All right, I find the waiver's been  
22 knowingly and voluntarily given and we will proceed with your  
23 plea of guilty today.

24 Have you had an opportunity to fully discuss your  
25 case with your counsel?

1 MR. RIOS: Yes, Your Honor.

2 MR. ACOSTA: Yes, Your Honor.

3 THE COURT: And are you fully satisfied with the  
4 representation and advice you've been given in your case?

5 MR. RIOS: Yes, Your Honor.

6 MR. ACOSTA: Yes, Your Honor.

7 THE COURT: All right, have you received a copy of  
8 the indictment in this case?

9 MR. RIOS: Yes, Your Honor.

10 MR. ACOSTA: Yes, Your Honor.

11 THE COURT: Do you understand the nature of the  
12 charges alleged against you?

13 MR. RIOS: Yes, Your Honor.

14 MR. ACOSTA: Yes, Your Honor.

15 THE COURT: All right, you have the right to have the  
16 indictment read aloud in Court or you can waive that right.  
17 What would you like to do?

18 MR. RIOS: Waive.

19 MR. ACOSTA: Waive.

20 THE COURT: All right, Mr. Gonzalez, would you please  
21 read the essential elements of the offense?

22 MR. GONZALEZ: Yes, Your Honor. The essential  
23 elements for the offense is as follows.

24 The -- that the Defendants and one or more persons in  
25 some way or manner made an agreement to commit the crime

1 charged in the indictment, that is, to possess with the intent  
2 to distribute 5 kilograms or more of a mixture or substance  
3 containing a detectable amount of cocaine.

4                 Secondly, that the Defendant knew the unlawful  
5 purpose of the agreement and joined in it with the intent to  
6 further it.

7                 And lastly, that the Defendant knowingly and  
8 voluntarily joined in the agreement, that is, with the intent  
9 to further its unlawful purpose.

10                THE COURT: Do you understand each of the essential  
11 elements just set forth?

12                MR. RIOS: Yes, Your Honor.

13                THE COURT: And do you admit -- sorry.

14                MR. ACOSTA: I'm sorry. Yes, Your Honor.

15                THE COURT: And do you admit that you committed each  
16 one of those essential elements?

17                MR. RIOS: Yes, Your Honor.

18                MR. ACOSTA: Yes, Your Honor.

19                THE COURT: All right, I've received a plea agreement  
20 in each one of your cases. If you can make sure you  
21 have -- counsel, do you have those documents for your client to  
22 follow along?

23                MR. KALISCH: Your Honor, I do not. I delivered the  
24 original to opposing counsel, and unfortunately, I did not keep  
25 a copy.

1                   THE COURT: Okay, I'm going to -- copies to you, so  
2 that your clients can follow along with me through these  
3 documents.

4                   MR. KALISCH: Thank you, Your Honor.

5                   THE COURT: Okay, if you will look with me at your  
6 plea agreement, on page 7, Mr. Acosta, can you please verify  
7 your signature dated November 29th, 2016?

8                   MR. ACOSTA: Yes, Your Honor.

9                   THE COURT: And Mr. Rios, please verify your  
10 signature on page 7, dated November 29th, 2016.

11                  MR. RIOS: Yes, Your Honor.

12                  THE COURT: Did you review this document with your  
13 counsel before you signed it?

14                  MR. RIOS: Yes, Your Honor.

15                  MR. ACOSTA: Yes, Your Honor.

16                  THE COURT: And are all of the terms of your  
17 agreement with the Government set out in this plea agreement?

18                  MR. RIOS: Yes, Your Honor.

19                  MR. ACOSTA: Yes, Your Honor.

20                  THE COURT: All right, I'm going to go -- I'm going  
21 to review some of the paragraphs in the plea agreement with  
22 you. If you'll please follow along with me.

23                  Starting in paragraph 1, Rights of the Defendants,  
24 paragraph lists some of your constitutional rights, which are  
25 to plead not guilty, to have a trial by a jury, to have your

1       guilt proven beyond a reasonable doubt, to confront and  
2       cross-examine witnesses, and to call witnesses in your defense,  
3       and to not be compelled to testify against yourself.

4           Paragraph 2 states that if you plead guilty in this  
5       case, you'll be waiving all of those constitutional rights. Do  
6       you understand that?

7           MR. RIOS: Yes, Your Honor.

8           MR. ACOSTA: Yes, Your Honor.

9           THE COURT: All right on page 2, paragraph 3,  
10       entitled "Sentence", the maximum penalties the Court can impose  
11       in your case are as follows.

12           Not less than 10 years and not more than life  
13       imprisonment, a fine not to exceed \$4 million or both, and  
14       Supervised Release of at least five years, a mandatory special  
15       assessment of \$100, forfeiture of property involved or  
16       traceable to the offense, restitution to victims or the  
17       community, and cost of incarceration and supervision.

18           Do you understand those are the maximum penalties  
19       that can be imposed in your case?

20           MR. RIOS: Yes, Your Honor.

21           MR. ACOSTA: Yes, Your Honor.

22           THE COURT: Paragraph 4 discusses the role of the  
23       United States Sentencing Guidelines and the District Court. Do  
24       you understand that the United States Sentencing Guidelines are  
25       not binding on the Court?

1 MR. RIOS: Yes, Your Honor.

2 MR. ACOSTA: Yes, Your Honor.

3 THE COURT: Have you had an opportunity to discuss  
4 the Guideline range in your case with your counsel?

5 MR. RIOS: Yes, Your Honor.

6 MR. ACOSTA: Yes, Your Honor.

7 THE COURT: All right. Going down to paragraph 5,  
8 Guideline stipulations, you and the Government have agreed that  
9 a number of Guideline provisions do or do not apply in your  
10 case.

11 Do you understand that the Court is not bound by  
12 these stipulations?

13 MR. RIOS: Yes, Your Honor.

14 MR. ACOSTA: Yes, Your Honor.

15 THE COURT: And so, even if the Court imposes a  
16 different Guideline provision, which makes your sentence higher  
17 than what you're expecting, you will still be bound by your  
18 plea agreement?

19 MR. RIOS: Yes, Your Honor.

20 MR. ACOSTA: Yes, Your Honor.

21 THE COURT: All right, if you'll turn with me to  
22 paragraph 10, the paragraph entitled "Voluntary Plea", this  
23 paragraph states that your plea of guilty is freely and  
24 voluntarily made and is not the result of force, threats, or  
25 promises other than those set forth in this agreement.

1           Has anyone in any way tried to force you to plead  
2 guilty in this case?

3           MR. RIOS: That's correct, Your Honor, no one has.

4           MR. ACOSTA: No, no one has forced me.

5           THE COURT: And other than a written plea agreement,  
6 has -- have any promises or reassurances been made to you in  
7 order to induce your plea of guilty?

8           MR. RIOS: No, Your Honor, not at all.

9           MR. ACOSTA: Not at all. No, Your Honor.

10          THE COURT: All right, going down to paragraph 11,  
11 waiver of right to appeal or otherwise challenge sentence, this  
12 paragraph states that you are giving up all your rights to  
13 appeal with the limited exception of two circumstances, that  
14 being that the sentence imposed exceeds the statutory maximum  
15 and your right to appeal or seek collateral review of an  
16 ineffective assistance of counsel.

17          Are you voluntarily agreeing to give up your rights  
18 to appeal in this case?

19          MR. RIOS: Yes, Your Honor.

20          MR. ACOSTA: Yes, Your Honor.

21          THE COURT: All right, finally, paragraph 13,  
22 immigration status consequences. Do you understand that if you  
23 are not a citizen of the United States, that a plea of guilty  
24 in this case will likely result in deportation and affect your  
25 ability to ever become a citizen of the United States?

1           MR. RIOS: Yes, I understand.

2           MR. ACOSTA: Yes, Your Honor.

3           THE COURT: All right, if you'll look with me at your  
4 Plea Agreement Addendum. I just need you to confirm your  
5 signature dated November 29th, 2016?

6           MR. RIOS: Yes, Your Honor.

7           MR. KALISCH: One moment, Your Honor.

8           THE COURT: Uh-huh.

9           MR. ACOSTA: Yes, Your Honor.

10          THE COURT: All right, before I can recommend that  
11 the district judge accepts your plea of guilty, I must find  
12 there's a Factual Basis to support your plea of guilty.

13          If you'll look with me at the Factual Basis filed in  
14 your case, please confirm your signature dated November 29th,  
15 2016?

16          MR. RIOS: Yes, Your Honor.

17          MR. ACOSTA: Yes, Your Honor.

18          THE COURT: And did you review this document with  
19 your counsel before you signed it?

20          MR. RIOS: Yes, Your Honor.

21          MR. ACOSTA: Yes, Your Honor.

22          THE COURT: All right, Mr. Gonzalez, would you please  
23 summarize the Factual Basis for both Mr. Acosta and Mr. Rios?

24          MR. GONZALEZ: Your Honor, the Factual Basis for both  
25 are identical. It's the same Factual Basis for both.

1           The Factual Basis is as follows, that the Defendant  
2 hereby stipulates and agrees that at all times relevant to the  
3 indictment herein, the following facts were true.

4           That the Defendant, who is changing his plea to  
5 guilty, is the same person charged in the indictment; two, that  
6 the events described in the indictment occurred in the Eastern  
7 District of Texas; that the Defendant and one or more persons  
8 in some way or manner made an agreement to commit the crime  
9 charged in the indictment to knowingly and intentionally  
10 possess with the intent to distribute and dispense 450  
11 kilograms or more of a mixture or substance containing a  
12 detectable amount of cocaine; that the Defendant knew the  
13 unlawful purpose of the agreement and joined in it with the  
14 intent to further it; that the Defendant knew the amount  
15 involved during the term of the conspiracy involved 450  
16 kilograms or more of a mixture or substance containing a  
17 detectable of cocaine.

18           This amount was involved in the conspiracy after the  
19 Defendant entered the conspiracy, and was reasonably  
20 foreseeable to the Defendant, and was part of jointly taken  
21 activity.

22           And lastly, that the Defendant's role in the  
23 conspiracy was to supply co-conspirators with kilogram  
24 quantities of cocaine from various sources, which would then be  
25 distributed to other co-conspirators and co-defendants during

1       the term of the conspiracy in the Eastern and Northern  
2       Districts of Texas.

3           THE COURT: Thank you, is everything in the Factual  
4       Basis true and correct?

5           MR. RIOS: Yes, Your Honor.

6           MR. ACOSTA: Yes, Your Honor.

7           THE COURT: Are there any changes you would offer at  
8       this time?

9           MR. RIOS: No, Your Honor.

10          MR. ACOSTA: No, Your Honor.

11          THE COURT: All right, please state in your own words  
12       the criminal conduct to which you're pleading guilty?

13          MR. RIOS: I participated in a conspiracy to bring  
14       drugs to the United States.

15          THE COURT: Thank you.

16          MR. ACOSTA: I participated in a conspiracy to bring  
17       drugs to the United States.

18          THE COURT: Okay, are both Defense counsel and the  
19       Government satisfied there's a Factual Basis for the plea?

20          MR. GONZALEZ: Yes, Your Honor.

21          MR. KALISCH: Yes, Your Honor.

22          THE COURT: All right, and counsel have you discussed  
23       the facts of the case with your clients and joined in their  
24       decision to plead guilty here today?

25          MR. KALISCH: I do, Your Honor.

1                 THE COURT: All right, Mr. Rios, with respect to  
2 Count 1 of the indictment, how do you now plead, guilty or not  
3 guilty?

4                 MR. RIOS: Guilty.

5                 THE COURT: Mr. Acosta, with respect to Count 1 of  
6 the indictment, how do you now plead, guilty or not guilty?

7                 MR. ACOSTA: Guilty.

8                 THE COURT: Being satisfied with the responses given  
9 during this hearing, I make the following findings on the  
10 record.

11                 In the case of United States of America v. Gustavo  
12 Angarita Rios and Jose Home Acosta, the Court finds that the  
13 Defendants are competent to plead at this time, have had  
14 assistance of counsel, understands their trial rights,  
15 understands the nature of the charges against them, understands  
16 the maximum penalties that can be given under a sentence in  
17 connection with the indictment, understands the District Court  
18 will refer to the Sentencing Guidelines to set any sentence,  
19 which such Guidelines are merely discretionary, that the plea  
20 is knowing and voluntary, and that there is a Factual Basis for  
21 the plea.

22                 The Court further finds that the ends of justice will  
23 be served by the acceptance of Mr. Acosta and Mr. Rios' plea of  
24 guilty and will sign a recommendation that the district judge  
25 accept your plea of guilty. And you'll have 14 days to make

1 any objections to that recommendation.

2                   At this time, sirs, you'll be remanded to the custody  
3 of the United States Marshal pending your sentencing hearing.  
4 You will meet with probation in the interim.

5                   You'll have a pre-sentence interview. A Pre-sentence  
6 Report will be prepared by the probation officer. You'll be  
7 given an opportunity to review that report with your counsel  
8 and make any objections you see fit to it.

9                   The district judge will utilize that report and your  
10 objections in determining your sentence.

11                  MR. RIOS: Yes, Your Honor.

12                  MR. ACOSTA: Yes, Your Honor.

13                  THE COURT: All right, anything further from the  
14 Government?

15                  MR. GONZALEZ: No, Your Honor, thank you.

16                  THE COURT: Anything further from Defense?

17                  MR. KALISCH: No, Your Honor.

18                  THE COURT: All right, we'll stand adjourned in this  
19 matter.

20                  MR. ACOSTA: Thank you.

21                  (Proceedings concluded at 11:23 a.m.)

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1                   **CERTIFICATE**  
2  
3  
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I, Chris Hwang, court approved transcriber, certify  
5 that the foregoing is a correct transcript from the official  
6 electronic sound recording of the proceedings in the above-  
7 entitled matter.

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August 14, 2020

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Chris Hwang

Date

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Transcriber

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